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extent Complainant claims she suffered physical problems as a result of the alleged discrimination, any treatment she sought for similar physical problems in the two years preceding the alleged discrimination must be produced. In other words, if the Complainant claims she suffered from sleeplessness as a result of the alleged discrimination, and she sought medical treatment for sleeplessness at any time two years prior to the alleged discrimination, the Agency has a right to that information. The Complainant should be absolutely sure what, if any, physical problems she claims were a result of the alleged discrimination and reveal them to the agency immediately, along with any medical treatment she sought. I will not permit the Complainant at hearing to allege any symptoms she has not revealed prior to the hearing.

However, the fact that Complainant is claiming compensatory damages and that she sought medical treatment as a result of the discrimination, does not give the Agency *cart blanche* authority to review all of Complainant's medical information for the last five years. There are federal laws in place, such as HIPPA, to protect medical information due to its highly sensitive and private nature. Just because an employee chooses to file an action for discrimination does not mean that she automatically gives up her privacy right in all her medical information. I fail to see how such a sweeping request is relevant or is likely to lead to the discovery of relevant information. Whether Complainant had a sore throat is not relevant as to whether she suffered emotional distress as a result of discrimination. To allow such an invasion of privacy would do nothing more than chill future claimants from exercising their federal rights. When this concern is weighed against the probative value and remoteness in time of the information sought, production cannot be justified.

On the other hand, a balance has to be struck between the Complainant's right to privacy and the Agency's right to defend its case, and I do recognize that some medical and mental

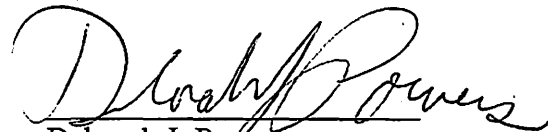
health treatment that was sought close in time to the discriminatory act may be relevant. Accordingly, as to general healthcare information not related to Complainant's disability or treatment sought and/or symptoms experienced as a result of the alleged discrimination, the Agency will be permitted access to medical and mental health treatment information for two (2) years prior to the alleged act of discrimination, and until such time as Complainant states the emotional distress has ceased. If the emotional distress is ongoing and continues to this day, then the agency is entitled to medical and mental health information up to the current time. This general medical information is further narrowed to include only individual (as opposed to family or marital) mental health treatment, and with regard to medical treatment, the production will be limited to the type of medical treatment that would cause a reasonable person to experience emotional distress, which includes any surgery or major medical procedures. Routine medical visits are not to be included.

The Complainant is instructed to provide complete responses to the Agency's discovery requests, as limited herein, on or before January 7, 2011. Because the information is being produced beyond the deadline for discovery, the summary judgment deadline is extended to January 21, 2011. All other deadlines remain the same.

For the Commission:

It is so ORDERED.

December 17, 2010
Date


Deborah J. Powers
Administrative Judge

/s/Anne-Louise Samson
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